

Decision No. 21025

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 SOUTH COAST GAS COMPANY, )  
 a corporation, to purchase the gas )  
 works known as Elsinore Gas Works, )  
 from Thomas T. Porteous, receiver )  
 for Samuel H. Gunder and Agnes )  
 Gunder; for a certificate of pub- )  
 lic convenience and necessity; for )  
 a permit to exercise franchise )  
 rights, and for a permit to sell )  
 stock. The application for a )  
 permit to purchase said Elsinore )  
 Gas Works is joined in by Samuel H. )  
 Gunder and Agnes Gunder and by )  
 Thomas T. Porteous, receiver ap- )  
 pointed by the Superior Court of )  
 the State of California, in and for )  
 the county of Riverside, for said )  
 Samuel H. and Agnes Gunder. )

ORIGINAL

Application No. 15450.

George L. Hampton, associated with  
W. C. Kennedy, for South Coast Gas  
Company;

Fred L. Hamblin, for Thomas T. Porteous,  
receiver for Samuel H. Gunder and  
Agnes Gunder, interested parties;

McAdoo, Neblett, O'Connor and Clagett,  
by B. H. Mitchell, for Mrs. Agnes Gunder,  
interested party;

Woodruff, Musick, Pinney & Hartke,  
by C. H. Hartke, for Samuel H. Gunder,  
interested party.

BY THE COMMISSION:

O P I N I O N

The Commission is asked in this proceeding to enter  
its order (1) permitting Samuel H. Gunder, Agnes Gunder and Thomas  
T. Porteous, hereinafter referred to as the sellers, to sell, and

South Coast Gas Company, hereinafter referred to as the purchaser, to purchase for \$93,000.00 cash the gas works and distributing system situated in the City of Elsinore, Riverside County, known as the Elsinore Gas Works; (2) authorizing the purchaser to issue \$96,000.00 par value of its common capital stock and sell the same to the American States Public Service Company at par for cash; and (3) granting the South Coast Gas Company a certificate of public convenience and necessity and permission to exercise franchise rights.

It is of record (Exhibit No. 1) that the Superior Court of the State of California in and for the County of Riverside by its order of January 19, 1928, appointed Thomas T. Porteous receiver and authorized and empowered him to take possession of all the following described real and personal property:-

"All that certain real property situated in the City of Elsinore, County of Riverside, State of California, and more particularly described as follows:-

Lots 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 11, 13, 15 and 17, all in Block 82 of Elsinore as per Map of Heald's Resubdivision recorded in the office of the County Recorder of San Diego County in Book 8 of Maps at page 378 thereof.

That certain public utility situated in the City of Elsinore known as the Elsinore Gas Plant and located on the above described property, together with all machinery, tools, trucks, service cars, automobiles and equipment of whatsoever kind and character including the distributing system in the streets, alleys and by-ways of the City of Elsinore, franchises, contracts, records, files, books, ledgers, accounts, furniture, fixtures, assets, credits, bank accounts, and all other appurtenances thereunto belonging.

That certain franchise granted under and by the terms of Ordinance No. 149 of the City of Elsinore to Samuel H. Gunder for the right to lay and maintain gas pipes in the public highways in the City of Elsinore, Riverside County, California, together with all rights and privileges granted thereby, which said Ordinance was approved on the 9th day of July, 1923.

All bank accounts, moneys, credits and deposits standing in the name of the Elsinore Gas Works or in the name of the said defendant, Agnes Gunder, as the operator or manager of said plant.

All bonds and securities received by the defendant, Agnes Gunder, from the plaintiff, Samuel H. Gunder, since the 29th day of May, 1923.

All bonds, moneys and securities in the hands of the defendant, Agnes Gunder, her agents, trustees or representatives, belonging to the plaintiff, Samuel H. Gunder.

Any and all bonds, stocks, moneys or securities in the hands of the said defendant, Agnes Gunder, her agents, trustees or representatives, purchased or acquired from the proceeds of bonds, stocks, securities or moneys in any manner acquired by the said Agnes Gunder from the said plaintiff, Samuel H. Gunder,

Together with all other property involved in this action including all bonds, notes, moneys and securities. To take possession, manage and operate the Elsinore Gas Plant, to receive rents, collect debts, compound and compromise the same, make transfers, to sue or defend actions and to generally do such acts respecting such property and properties as the Court may authorize."

On January 16, 1929 said court entered its order (Exhibit 2) directing the receiver to sell for not less than \$90,000.00 the following described property:-

- 1.- Lots 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 11, 13, 15, and 17, all in Block 82 of Elsinore as per Map of Heald's Resubdivision recorded in the office of the County Recorder of San Diego County in Book 8 of Maps at page 378 thereof;
- 2.- That certain public utility situated in the City of Elsinore known as the Elsinore Gas Plant and located on the above described property, together with all machinery, tools, trucks, service cars, automobiles and equipment of whatsoever kind and character including the distributing system in the streets, alleys and by-ways of the City of Elsinore, franchises, contracts, records, files, books, ledgers, furniture, fixtures, assets, credits, and all other property and appurtenances thereunto belonging;

3. - That certain franchise granted under and by the terms of Ordinance No. 149 of the City of Elsinore to Samuel H. Gunder for the right to lay and maintain gas pipes in the public highways in the City of Elsinore, Riverside County, California, together with all rights and privileges granted thereby, which said Ordinance was approved on the 9th day of July, 1923, and all other appurtenances thereunto belonging excepting bank accounts and accounts receivable,"

From Exhibit No. 3 it appears that under date of January 23, 1929 the receiver offered the property for sale. His offer contained a proviso that any sale made by him is subject to the confirmation of the court and also subject to the approval of the Railroad Commission of the State of California.

The record shows that three bids were received for the properties; one from W. B. Foshey Co. for \$90,000.00 which bid was not accompanied by a certified check; one from Southern California Gas Company for \$90,101.00; and one from South Coast Gas Company for \$93,000.00. By its order of February 18, 1929 (Exhibit 4) the Superior Court of the State of California in and for the county of Riverside confirmed the sale of the properties known as the Elsinore Gas Works to South Coast Gas Company.

In the application now before the Commission the Commission is asked to approve the sale of the properties. Counsel for the South Coast Gas Company called as a witness Mr. F. M. Faude, consulting engineer, who testified that in his opinion the reproduction cost new of the properties which are the subject matter of this application, was \$129,957.00 and the reproduction cost new less depreciation, \$118,378.00. He also testified that

in his opinion \$93,000.00 is not a fair and reasonable price for the properties at this time.

Quoting from the transcript ---

- Mr. Hampton: Now, do you consider that the sum of \$93,000.00 is a fair and reasonable price for this utility?
- Mr. Faude: Not at the present time.
- Mr. Hampton: Why not?
- Mr. Faude: At the present time the company is faced with what I regard as ruinous competition in Elsinore.
- Mr. Hampton: That is, by reason of the certificate that has been issued to the Southern California Gas Company?
- Mr. Faude: Yes, sir.
- Mr. Hampton: What do you mean by ruinous competition?
- Mr. Faude: That if \$93,000.00 is paid for these properties, the South Coast Gas Company will be unable to earn a reasonable return upon that investment.

In view of the testimony offered by South Coast Gas Company, C. H. Hartke, appearing for Samuel H. Gunder, asked John C. Rath, President of the company, if the said company wanted the Commission to approve the sale. Mr. Rath answered in the affirmative.

To obtain the money necessary to pay for the properties (\$93,000.00) and expenses (\$3,000.00) incident thereto, the South Coast Gas Company asks permission to issue and sell to the American States Public Service Company \$96,000.00 par value of its common capital stock.

J. E. Spelce, an assistant engineer for the Railroad Commission, in Exhibit Seven estimates the historical cost of the

properties of Elsinore Gas Works, including present value of land, at \$80,141.01. The accrued depreciation he estimates at \$6,379.00 which, if deducted from the \$80,141.01, leaves a balance of \$73,762.01. These estimates include the cost of the company's generating plant. Assuming that the company were to acquire and distribute natural gas, the historical cost of the company's distributing system including present value of lands is estimated by J. E. Spelce at \$59,166.19. The accrued depreciation on this investment he estimates at \$4,286.21 leaving a net historical cost of \$54,879.78.

The Commission has not heretofore undertaken to fix the price which a public utility may pay for properties. As a matter of fact, it is doubtful whether it has sufficient authority to fix such price. The Commission, however, has unquestioned authority over the amount of securities which a public utility may issue to finance the purchase of properties, over the utilities' accounts and over its rates and services. It has repeatedly held that if purchasers of public utility properties agree to pay more for such properties than appears reasonable to the Commission, the excess purchase price should be charged to profit and loss accounts rather than to fixed capital accounts.

We are of the opinion that the South Coast Gas Company should be permitted to issue not exceeding \$73,800.00 par value of its capital stock to acquire the properties of the Elsinore Gas Works. The order herein will permit the sale of the stock at not less than par. The order will not prevent the company from selling the stock at a premium which will net it

the amount which it has agreed to pay for the properties known as the Elsinore Gas Works. The South Coast Gas Company, however, may not charge to fixed capital account more than \$80,141.01, which is offset by accrued depreciation of \$6,341.01 and by capital stock of the par value of \$73,800.00. The difference between the \$73,800.00 and the \$96,000.00 referred to above, must be charged to Account 508, "Miscellaneous Debits to Profit and Loss" or written off by charging premium capital stock in the event the stock is sold at a premium.

Applicant, South Coast Gas Company, asks for a permit to exercise franchise rights and for a certificate of public convenience and necessity. Two franchises are involved in this proceeding; one franchise granted by Ordinance No. 149 of the City of Elsinore, the other by Ordinance No. 179 of the Board of Supervisors of Riverside County. The Commission has heretofore by Decision No. 14096, dated September 27, 1924, certified and declared that public convenience and necessity require the exercise by Samuel H. Gunder, doing business under the firm name of Elsinore Gas Works, of the rights and privileges granted under Ordinance No. 149 of the City of Elsinore. It does not seem necessary to us that we again in this proceeding make a similar finding so far as Ordinance No. 149 is concerned. Ordinance No. 179 grants to Thomas T. Porteous a franchise and privilege for a period of twenty-five years to lay, maintain and operate pipe lines and appurtenances, over, along and across all public roads, highways, streets and alleys within the County of Riverside, outside of incorporated cities, together with the right to carry, transport,

convey, conduct, furnish and distribute gas for light, heat, power and industrial purposes. The ordinance provides for the assignment of the rights and privileges granted thereby. No one appeared in opposition to the granting of the certificate to exercise the franchise rights and privileges. However, there is nothing in the record which warrants the Commission to make a finding that public convenience or necessity requires the exercise of the rights and privileges granted throughout all of Riverside County. The order herein will restrict the exercise of the rights and privileges granted by the franchise to the area which is within one mile of the city limits of Elsinore.

The South Coast Gas Company has filed a stipulation agreeing that it, its successors and assigns, will never claim before the Railroad Commission or any court or other public body the value for the rights and privileges granted by said Ordinances Nos. 149 and 179 in excess of \$245.00. The stipulation filed is in satisfactory form.

#### ORDER

The Commission having been asked to enter its order approving the sale of the Elsinore Gas Works to the South Coast Gas Company, to authorize the issue of stock and to declare that public convenience and necessity requires, and will require, the exercise of rights and privileges granted by the ordinances referred to herein, a public hearing having been held before



Examiner Fankhauser, and the Commission being of the opinion that the sale of the aforesaid property should be approved and that the South Coast Gas Company should be permitted to issue not exceeding \$73,800.00 par value of its common capital stock, that the money, property or labor to be procured or paid for by the issue of the stock is reasonably required by applicant, and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expense or to income, therefore,

IT IS HEREBY ORDERED as follows:-

- (1) Samuel E. Gunder, Agnes Gunder and Thomas T. Porteous may sell to the South Coast Gas Company the gas works and distributing system referred to herein as the Elsinore Gas Works, for the sum of \$93,000.00, such sale to be made pursuant to the offer of the South Coast Gas Company filed in this proceeding as "Exhibit B" and which sale is hereby approved.
- (2) South Coast Gas Company may issue and sell for not less than par \$73,800.00 par value of its common capital stock and use the proceeds obtained from the sale of such stock to pay for the aforesaid properties and expenses incident to the acquisition of such properties.
- (3) South Coast Gas Company upon the acquisition of the properties, known as Elsinore Gas Works, may charge to its fixed capital accounts not exceeding \$80,141.01. The difference between said

\$73,800.00 par value of stock and the amount which it has agreed to pay for the properties of the Elsinore Gas Works plus the expenses incident thereto must be charged to Account 508, "Miscellaneous Debits to Profit and Loss" or written off by charging premium on capital stock, in the event <sup>the</sup> stock is sold at a premium.

- (4) Within sixty (60) days after the acquisition of the property herein referred to, the South Coast Gas Company shall file with the Railroad Commission a copy of the deed or other instrument of conveyance under which it acquires and holds title to said properties.
- (5) The authority herein granted to transfer the properties and to issue stock, shall become effective fifteen (15) days after the date hereof.
- (6) South Coast Gas Company shall keep such record of the issue, sale and delivery of the stock herein authorized, and of the disposition of the proceeds as will enable it to file, on the 25th day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA  
HEREBY CERTIFIES AND DECLARES, that public convenience and  
necessity require the exercise by Thomas T. Porteous, his

successors or assigns, of the rights and privileges granted under Ordinance No. 179 of the Board of Supervisors of Riverside County, provided that said rights and privileges may be exercised only within one mile of the city limits of Elsinore.

DATED at San Francisco, California, this 13<sup>th</sup>  
day of May, 1929.

Thos. D. Gault  
C. Seamy  
Edmund C. ...  
Leon Whitell  
W. J. ...

Commissioners.